

# Senate Daily Reader

**Friday, February 28, 2003**

Bills Included				
HB 1026	HB 1073	HB 1079	HB 1104	HB 1111
HB 1118	HB 1141	HB 1173	HB 1190	HB 1192
HB 1211	HB 1236	HB 1277	HB 1279	HCR 1013

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

770I0291

## SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1026** - 02/26/2003

Introduced by: The Committee on State Affairs at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to establish the regents scholarship program.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 13-55 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 There is established the regents scholarship program to be administered by the Board of  
6 Regents. The purpose of the program is to allow South Dakota's most academically  
7 accomplished high school graduates to receive an affordable education at any university, college,  
8 or technical school that is accredited by the North Central Association of Colleges and Schools  
9 and that provides instruction from a campus located in South Dakota.

10 Section 2. In order to be eligible for a regents scholarship award, a student shall:

11 (1) Be a resident of South Dakota at the time of graduation from high school;

12 (2) Have a composite score of 24, or higher, on the test administered by the American  
13 College Testing Program or a verbal-mathematics score of 1070-1100, on the  
14 Scholastic Assessment Test and the ACT or SAT test shall be taken before the  
15 student graduates from high school;



- 1       (3)   Meet the high school course requirements as provided in Board of Regents Policy  
2           Number 2:3(2)(F) as in effect on January 1, 2003;
- 3       (4)   Attend a university, college, or technical school that is accredited by the North  
4           Central Association of Colleges and Schools and that provides instruction from a  
5           campus located in South Dakota; and
- 6       (5)   Enter into the program within five years of graduation from high school or within one  
7           year of the student's release from active duty with an active component of the armed  
8           forces if the release is within five years of the student's graduation from high school.  
9           However, eligibility is lost if a student attends full-time a regionally accredited  
10          university, college, or technical school located outside South Dakota within the five  
11          years following high school graduation or within the one year following release from  
12          active military service.

13       A student is eligible to participate in the regents scholarship program for the equivalent of  
14       four academic years (eight consecutive spring and fall terms) or until the attainment of a  
15       baccalaureate or technical degree, whichever comes first. However, the executive director of the  
16       Board of Regents may grant exceptions to the continuous enrollment requirements for good  
17       cause shown.

18       Section 3. If it is determined that a student cannot complete the high school course  
19       requirements as provided in Board of Regents Policy Number 2:3(2)(F) as in effect on January 1,  
20       2003, due to the unavailability of the courses of study at the student's high school, the student  
21       may be admitted into the regents scholarship program.

22       Section 4. One-half of the annual scholarship award shall be paid to public institutions on  
23       behalf of eligible students there enrolled or directly to eligible students enrolled at nonpublic  
24       institutions at the beginning of the fall semester and the other half shall be paid at the beginning

of the spring semester. The amount of the annual award shall be as follows:

- (1) One thousand dollars for the first year of attendance;
- (2) One thousand dollars for the second year of attendance;
- (3) One thousand five hundred dollars for the third year of attendance;
- (4) Two thousand five hundred dollars for the fourth year of attendance.

If, in any year, the total funds available to finance the scholarship awards are insufficient to permit each eligible recipient to receive the full amount provided in this section, the available monies shall be prorated and distributed to each recipient in proportion to the entitlement contemplated by this section. The total amount of the scholarship may not exceed six thousand dollars.

Section 5. In order to maintain eligibility, a student shall:

- (1) Maintain a cumulative 3.0 grade point average on a 4.0 scale. Cumulative grade point average shall be calculated after the second semester and every semester thereafter.  
The student shall complete consecutive spring and fall terms in order to remain eligible for continuation of the scholarship program from term to term. A student whose cumulative grade point average falls below 3.0 on a 4.0 scale shall forfeit the scholarship for the subsequent semester and for subsequent semesters until the student has reestablished eligibility. To reestablish eligibility, the student shall comply with all course load, enrollment, and proficiency examination requirements for continued eligibility stated in this Act, and the student shall achieve a cumulative grade point average of 3.0, or greater, on a 4.0 scale. The scholarship shall be reinstated beginning the semester following that in which the student achieves a cumulative grade point average of 3.0, or greater, on a 4.0 scale. Reinstatement of a scholarship does not extend the time allowed under the scholarship program; any scholarship award

forfeited cannot be reclaimed after a student has regained eligibility. A student whose cumulative grade point average falls below 3.0 on a 4.0 scale a second time forfeits the scholarship for all subsequent semesters;

(2) Complete fifteen credit hours of instruction per semester. The student shall enroll in and complete at least fifteen credit hours of instruction in each consecutive spring and fall term. If the executive director of the Board of Regents determines that a student's failure to enroll or to maintain continued enrollment occurred as a direct result of legitimate factors outside the student's control, or has resulted from the student's participation in an activity that in the executive director's judgment provides knowledge or experience that will enhance the student's academic pursuits, the executive director may extend the student's eligibility to participate in the program for up to two additional years, if the student does not enroll in a noneligible institution; and

(3) Sit for and pass all sections of a college proficiency exam as required by Board of Regents Policy Number 2.28 as in effect on January 1, 2003, at the end of the sophomore year. The Board of regents may review and adjust the proficiency examinations administered in keeping with sound academic practice. If such changes are made, the Board of Regents shall notify all eligible institutions of new testing standards or requirements. If the student fails to pass the proficiency examinations the first time, eligibility is forfeited for continuation in the scholarship program.

Section 6. The Board of Regents may allocate funds appropriated by the Legislature or funds generated by gifts, donations, grants, or endowments for the purposes of this Act to students qualifying pursuant to section 2 of this Act.

Section 7. The provisions of section 3 of this Act are repealed on July 1, 2005.

1       Section 8. The Board of Regents shall promulgate rules, pursuant to chapter 1-26, to  
2   accomplish the purposes of this Act.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

337I0333

## HOUSE LOCAL GOVERNMENT COMMITTEE

### ENGROSSED NO. **HB 1073** - 01/30/2003

Introduced by: Representatives Michels, Buckingham, Burg, Cradduck, Elliott, Haverly, Hennies, Hunhoff, Kroger, LaRue, Madsen, Murschel, O'Brien, Olson (Mel), Peterson (Jim), Rhoden, Schafer, and Teupel and Senators Ham, Dempster, Knudson, Koetzle, McCracken, Moore, Olson (Ed), Reedy, Sutton (Dan), and Symens

1 FOR AN ACT ENTITLED, An Act to revise certain voting and participation requirements  
2 related to bond issues involving two or more political subdivisions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 6-3-3 be amended to read as follows:

5 6-3-3. The governing body of each participating political subdivision may appropriate money  
6 or may also issue the general obligation bonds of the subdivision, as provided in chapter 6-8B  
7 for the authorization, issuance, and sale of bonds, for the payment of its share of the cost of the  
8 building or improvement. No bonds may be issued ~~until~~ unless provision has been made by each  
9 of the other participating subdivisions for the payment of the subdivision's share of the cost and  
10 if there are two participating subdivisions, one subdivision agrees to bear at least thirty percent  
11 of the estimated cost of the building or improvement or if there are three or more participating  
12 subdivisions, at least two of the subdivisions each agree to bear at least twenty percent of the  
13 estimated cost of the building or improvement. The bonds may be issued if a simple majority of



- 1 all voters voting on the bond issue approve the bond issue.



# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

633I0240

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1079** - 02/19/2003

Introduced by: Representatives Murschel, Buckingham, Burg, Cradduck, Cutler, Dykstra, Elliott, Hackl, Haverly, Hennies, Kroger, LaRue, McCoy, O'Brien, Olson (Mel), Peterson (Jim), Rhoden, Schafer, and Solum and Senators Abdallah, Dempster, Koetzle, Kooistra, McCracken, Moore, Reedy, Sutton (Dan), and Symens

1 FOR AN ACT ENTITLED, An Act to revise certain eligibility restrictions related to secondary  
2 school extracurricular activities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-32-9 be amended to read as follows:

5 13-32-9. Any person adjudicated, convicted, or the subject of a suspended imposition of  
6 sentence for possession, use, or distribution of controlled substances or marijuana as defined in  
7 chapter 22-42 is ineligible to participate in any extracurricular activity at any secondary school  
8 accredited by the Department of Education and Cultural Affairs for one year. However, if the  
9 person has been adjudicated, convicted, or the subject of a suspended imposition of sentence for  
10 possession or use of marijuana as defined in chapter 22-42, the one-year suspension may be  
11 reduced to sixty school days if the person participates in an assessment with a certified chemical  
12 dependency counselor or completes an accredited intensive prevention program. If the  
13 assessment indicates the need for a higher level of care, the student is required to complete the



1 prescribed program before becoming eligible to participate in extracurricular activities. Upon a  
2 subsequent adjudication, conviction, or suspended imposition of sentence for possession, use,  
3 or distribution of controlled substances or marijuana by a court of competent jurisdiction, that  
4 person is ineligible to participate in any extracurricular activity while that person is attending any  
5 school accredited by the Department of Education and Cultural Affairs. Upon such a  
6 determination in any juvenile proceeding the Unified Judicial System shall give notice of that  
7 determination to the South Dakota High School Activities Association and the chief  
8 administrator of the school in which the person is enrolled.

9 As used in this section, the term, extracurricular activity, means any activity sanctioned by  
10 the South Dakota High School Activities Association.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

474I0330

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1104** - 02/26/2003

Introduced by: Representatives Peterson (Bill), Adelstein, Bartling, Begalka, Burg, Frost, Hanson, Juhnke, Lange, Madsen, Miles, Pederson (Gordon), Sebert, Sigdestad, Teupel, and Thompson and Senators McCracken, Apa, de Hueck, Dennert, Duxbury, Jaspers, and Symens

1 FOR AN ACT ENTITLED, An Act to impose an excise tax on the gross receipts of personal  
2 communications system, wireless, and cellular telecommunications companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Department," the South Dakota Department of Revenue;

6 (2) "Engaging in business," carrying on or causing to be carried on any activity with the  
7 purpose of direct or indirect benefit;

8 (3) "Secretary," the secretary of the Department of Revenue;

9 (5) "Telecommunications company," any person, as defined by § 2-14-2, trustee, lessee,  
10 receiver, or municipality providing any telecommunications service as defined in  
11 section 2 of this Act;

12 (6) "Telecommunications gross receipts tax," the gross receipts tax imposed by this Act.

13 Section 2. The term, telecommunications service, as used in this Act, means wireless personal  
14 communications services, wireless local loop services, enhanced special mobile radio services,



1 fixed wireless services, and cellular services that provide two-way communication. The term,  
2 telecommunications service, does not include the provision of terminal equipment used to  
3 originate or terminate such service. The term, telecommunications service, does not include  
4 specialized mobile radio service, non-network two-way radio telephone service, private mobile  
5 radio service, one-way cable television service, or two-way cable system subscriber interaction  
6 that may be required for the selection of video or other programming services.

7 Section 3. The term, gross receipts, as used in this Act, includes only revenue of a  
8 telecommunications company from the sale at retail of intrastate and interstate  
9 telecommunications services. Sale at retail does not include special access or toll-free incoming  
10 calls or the sale of any telecommunications service by a telecommunications company to another  
11 telecommunications company if the service is resold or becomes a component part of the sale by  
12 the second telecommunications company. Any hospital, hotel, motel, or place that provides  
13 temporary accommodations selling telecommunications services to its patients or guests is not  
14 a telecommunications company for the purposes of this Act.

15 Section 4. There is hereby imposed a tax of four percent upon the gross receipts of  
16 telecommunications services, as defined in section 2 of this Act, that originate and terminate in  
17 the same state and are billed to a customer with a place of primary use in this state or are deemed  
18 to have originated or been received in this state and to be billed or charged to a service address  
19 in this state if the customer's place of primary use is located in this state regardless of where the  
20 service actually originates or terminates. Notwithstanding any other provision of this Act and for  
21 purposes of the tax imposed by this section, the tax imposed upon mobile telecommunication  
22 services shall be administered in accordance with 4 U.S.C. §§ 116-126 as of July 28, 2000.

23 Section 5. The secretary shall deposit any revenue collected from the tax imposed by this Act  
24 into the property tax reduction fund.

1       Section 6. Any telecommunications company engaging in a business in this state whose gross  
2       receipts from telecommunications services are subject to the telecommunications gross receipts  
3       tax shall file with the department, an application for a telecommunications gross receipts tax  
4       license. An application for a license shall be made upon a form prescribed by the secretary and  
5       shall set forth the name under which the applicant transacts or intends to transact business, the  
6       location of the place of business, and such other information as the secretary may require. The  
7       application shall be signed by the owner, if a natural person; in the case of an association or  
8       partnership, by a member or partner thereof; or in the case of a corporation or a municipality,  
9       by an executive officer thereof or some person specifically authorized by the corporation or the  
10      municipality to sign the application, to which shall be attached the written evidence of the  
11      person's authority.

12      Section 7. The secretary shall grant and issue to each applicant a telecommunications gross  
13      receipts tax license. A license is not assignable and is valid only for the telecommunications  
14      company to which it was issued. Any license issued is valid and effective without further payment  
15      of fees until canceled or revoked.

16      Section 8. The secretary may refuse to issue a telecommunications gross receipts tax license  
17      to any person who is delinquent in payment of other taxes levied by the State of South Dakota.  
18      The secretary may also require an applicant to furnish to the state a bond, or other adequate  
19      security, as security for payment of any gross receipts tax that may become due, or require a  
20      bond or security as a condition precedent to remaining in business as a telecommunications  
21      company.

22      Section 9. Any person who is the holder of a telecommunications gross receipts tax license  
23      or is a telecommunications company whose receipts are subject to telecommunications gross  
24      receipts tax in this state shall file a return and remit the tax on or before the twentieth day of the

1 month following each monthly period. If the telecommunications company files the return and  
2 remits the tax by electronic transfer to the state, the telecommunications company shall file the  
3 return and remit the tax on or before the last day of the month following each monthly period.

4 The secretary may grant an extension of not more than five days for filing a return and  
5 remittance. Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if  
6 a return or remittance is not made on time.

7 Section 10. Any telecommunications company that is the holder of a telecommunications  
8 gross receipts tax license and that has failed to file a return, or that has filed a return and has  
9 failed to pay the tax due the state under this law on or before the fifteenth of the second month  
10 following the reporting period authorized, may no longer continue as a telecommunications  
11 company and its telecommunications gross receipts tax license shall be revoked and canceled.

12 Section 11. Any appeal from a decision of the secretary in a contested case shall be taken in  
13 accordance with chapter 1-26.

14 Section 12. The secretary may not reinstate the license of a telecommunications company,  
15 which has been canceled or revoked as provided in this Act, until all the telecommunications  
16 gross receipts tax due the state and a ten dollar reinstatement fee has been paid. The secretary  
17 may also require the telecommunications company to file a bond as security for any future  
18 liability.

19 Section 13. Any refund or allowance made by any telecommunication service or any amount  
20 written off the books of a telecommunications company reporting financial information on an  
21 accrual basis may be reported as an uncollectible debt and deducted from the gross receipts of  
22 any telecommunications service. If any uncollectible debt is subsequently collected, the amount  
23 is subject to the telecommunications gross receipts tax and shall be reported to the department  
24 in the month of collection.

1       Section 14. Any telecommunications company subject to the telecommunications gross  
2       receipts tax shall keep records of all receipts and telecommunications service sales. The records  
3       are, at all times during business hours of the day, subject to inspection by the department to  
4       determine the amount of tax due. The records shall be preserved for a period of three years  
5       unless the secretary, in writing, authorized their destruction or disposal at an earlier date.

6       Section 15. The secretary may promulgate rules, pursuant to chapter 1-26, concerning:

- 7       (1)    Telecommunications tax licensing, including bonding and filing license applications;  
8       (2)    The filing of returns and payment of the tax;  
9       (3)    Determining the application of the telecommunications tax and exemptions;  
10      (4)   Taxpayer record-keeping requirements; and  
11      (5)    Determining auditing methods.

12      Section 16. Any person who:

- 13      (1)    Makes any false or fraudulent return in attempting to defeat or evade the  
14             telecommunications gross receipts tax is guilty of a Class 6 felony;  
15      (2)    Fails to pay the telecommunications gross receipts tax due under this Act within thirty  
16             days from the date the tax becomes due is guilty of a Class 1 misdemeanor;  
17      (3)    Fails to keep the records required by this Act or refuses to exhibit these records to the  
18             department for the purpose of examination is guilty of a Class 1 misdemeanor;  
19      (4)    Fails to file a return required by this Act within thirty days from the date the return is  
20             due is guilty of a Class 1 misdemeanor;  
21      (5)    Engages in business as a telecommunications company under this Act without  
22             obtaining a telecommunications gross receipts tax license is guilty of a Class 1  
23             misdemeanor;  
24      (6)    Engages in business as a telecommunications company under this Act after the

company's telecommunications gross receipts tax license has been revoked or canceled by the secretary is guilty of a Class 6 felony;

(7) Willfully violates any rule of the secretary for the administration and enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor;

(8) Violates either subdivision (2) or subdivision (4) of this section two or more times in any twelve-month period is guilty of a Class 6 felony; or

(9) Engages in business as a telecommunications company under this Act without obtaining a telecommunications gross receipts tax license after having been notified in writing by the secretary that the telecommunications company is subject to the provisions of this Act is guilty of a Class 6 felony. However, it is not a violation of this subdivision if the telecommunications company providing any telecommunications service files an application for a telecommunications gross receipts tax license and meets all lawful prerequisites for obtaining such license within three days from receipt of written notice from the secretary.

For purposes of this section, the term, telecommunications company, includes corporate officers having control, supervision of, or charged with the responsibility for making tax returns or payments pursuant to this Act.

Section 17. If a corporation subject to the gross receipts tax under this Act fails for any reason to file the required returns or to pay the tax due, any of its officers having control, or supervision of, or charged with the responsibility for making such returns and payments are personally liable for such failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.

If any responsible corporate officer elects not to be personally liable for the failure to file the



1 required returns or to pay the tax due, the corporation shall provide the department with a surety  
2 bond or certificate of deposit as security for payment of any tax that may become due. The bond  
3 or certificate of deposit provided for in this section shall be in an amount equal to the estimated  
4 annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section  
5 does not apply to elected or appointed officials of a municipality if they are bonded pursuant to  
6 §§ 9-14-6 and 9-14-6.1.

7 Section 18. Any real and personal property owned by a telecommunications company that  
8 is used or intended for use in furnishing and providing telecommunication services is exempt  
9 from real and personal property taxes levied by the state, counties, municipalities, townships, or  
10 other political subdivisions of the state.

11 Section 19. The provisions of this Act do not apply to any property exempt from taxation  
12 pursuant to S.D. Const., Art. XI, § 5.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

725I0486

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1111 - 02/13/2003**

Introduced by: Representatives Michels, Cradduck, Gillespie, Glenski, Konold, McCoy, Peterson (Bill), Sebert, Smidt, Thompson, Van Gerpen, and Wick and Senators Diedrich (Larry), Ham, Jaspers, Kleven, McCracken, Sutton (Dan), and Vitter

1 FOR AN ACT ENTITLED, An Act to authorize construction management services to be  
2 employed on public improvement projects.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 For the purposes of this chapter, the term, construction management, means any project  
7 delivery system based on an agreement whereby a construction manager provides leadership to  
8 the construction process through a series of services to the public corporation.

9 Section 2. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 For the purpose of this chapter, the term, construction management services, means the  
12 following:

13 (1) Services provided in the planning and design phases of a public improvement project  
14 including the following:



- 1 (a) Consulting with, advising, assisting, and making recommendations to the public
- 2 corporation and architect or engineer on all aspects of planning for project
- 3 construction;
- 4 (b) Reviewing all plans and specifications as they are being developed and making
- 5 recommendations with respect to construction feasibility, availability of
- 6 material and labor, time requirements for procurement and construction, and
- 7 projected costs;
- 8 (c) Making, reviewing, and refining budget estimates based on the public
- 9 corporation's program and other available information;
- 10 (d) Making recommendations to the public corporation and the architect or
- 11 engineer regarding the division of work in the plans and specifications to
- 12 facilitate bidding and awarding of contracts;
- 13 (e) Soliciting the interest of capable contractors and assisting the public
- 14 corporation in taking bids on the project;
- 15 (f) Analyzing the bids received and awarding contracts; and
- 16 (g) Preparing and monitoring a progress schedule during the design phase of the
- 17 project and preparation of a proposed construction schedule; and
- 18 (2) Services provided in the construction phase of the public improvement project
- 19 including the following:
- 20 (a) Maintaining competent supervisory staff to coordinate and provide general
- 21 direction of the work and progress of the contractors on the project;
- 22 (b) Observing the work as it is being performed for general conformance with
- 23 working drawings and specifications;
- 24 (c) Establishing procedures for coordinating among the public corporation,

1 architect or engineer, contractors, and construction manager with respect to  
2 all aspects of the project and implementing labor policy in conformance with  
3 the requirements of the public corporation's policy and making  
4 recommendations;

5 (d) Reviewing and processing all applications for payment by involved contractors  
6 and material suppliers in accordance with the terms of the contract;

7 (e) Making recommendations for and processing requests for changes in the work  
8 and maintaining records of change orders;

9 (f) Scheduling and conducting job meetings to ensure orderly progress of the  
10 work;

11 (g) Developing and monitoring a project progress schedule, coordinating and  
12 expediting the work of all contractors, and providing periodic status reports to  
13 the owner and the architect and engineer; and

14 (h) Establishing and maintaining a cost control system and conducting meetings to  
15 review costs.

16 Section 3. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 For the purposes of this chapter, the term, construction manager, means any person or entity  
19 providing construction management services for a public corporation, and either a construction  
20 manager-agent or construction manager-at-risk.

21 Section 4. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 For the purposes of this chapter, the term, construction manager-agent, means any  
24 construction manager that provides construction management services to a public corporation

1 in a fiduciary capacity. No construction manager-agent may contract directly with any contractor  
2 or supplier for the project.

3 Section 5. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 For the purposes of this chapter, the term, construction manager-at-risk, means any  
6 construction manager that assumes the risk for construction, rehabilitation, alteration, or repair  
7 of a public improvement, and provides construction management services to the public  
8 corporation. The construction manager-at-risk shall directly contract with subcontractors and  
9 suppliers for the project.

10 Section 6. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 Any public corporation may engage a construction manager if planning, designing, or  
13 constructing a public improvement, or if improving, altering, or repairing a public improvement.  
14 However, no public corporation is required to engage a construction manager.

15 Section 7. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 Unless the construction manager-agent is an employee of the public corporation and provides  
18 the construction management services pursuant to such employment, no public corporation may  
19 engage the services of a construction manager except as follows:

20 (1) The public corporation shall first make the following determinations:

21 (a) That it is in the public interest to utilize the services of a construction manager;  
22 and

23 (b) That the construction management services would not unreasonably duplicate  
24 and would be in addition to the normal scope of separate architect or engineer

1 contracts;

2 (2) Notwithstanding any other provisions of this chapter, no construction manager may  
3 contract to perform actual construction on the project, except as follows:

4 (a) The construction manager may perform general conditions of the construction  
5 contract as required by the owner;

6 (b) The construction manager is a construction manager-at-risk and was solicited  
7 through a qualification-based request for proposals method of procurement as  
8 provided in section 8 of this Act and the construction manager-at-risk, for any  
9 actual construction contracted by the construction manager-at-risk to be  
10 performed on the project, provides payment and performance bonds and  
11 competitively bids the work as required by any statute governing bidding and  
12 bonding for public improvement projects;

13 (c) Pursuant to a contract awarded on an emergency basis, pursuant to § 5-18-3.1;  
14 or

15 (d) Pursuant to a contract negotiated pursuant to § 5-18-9.1 or 5-18-9.2; and

16 (3) No person, firm, or corporation may act as a construction manager-agent and also as  
17 a contractor on any public improvement, except as follows:

18 (a) Pursuant to a contract awarded on an emergency basis, pursuant to § 5-18-3.1;  
19 or

20 (b) Pursuant to a contract negotiated pursuant to § 5-18-9.1 or 5-18-9.2.

21 Section 8. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 Each qualification based request for proposals required by subsection 7(2)(b) of this Act to  
24 enter into a construction manager-at-risk services contract where the construction manager-at-

1 risk intends to actually perform construction on the project, shall meet the following criteria:

2 (1) The public corporation shall, prior to issuing any request for proposals to enter in a  
3 construction management services contract, establish and publish procedures for the  
4 solicitation and award of such contracts, which procedures shall include the following:

5 (a) The procedures and standards to be used to qualify construction managers;

6 (b) The procedures for preparing and submitting proposals;

7 (c) The procedures for evaluating proposals;

8 (d) The procedures for negotiations between the public corporation and those  
9 submitting proposals prior to the acceptance of a proposal. The procedures  
10 shall contain safeguards to preserve the confidential information and  
11 proprietary information supplied by those submitting proposals; and

12 (e) The procedures for awarding construction management services contracts;

13 (2) A request for proposals to enter into a construction management services contract  
14 shall contain the following elements:

15 (a) The identity of the public corporation;

16 (b) A description of the proposed public improvement;

17 (c) A description of the qualifications the construction manager will be required  
18 to have;

19 (d) The procedures to be followed for submitting proposals, the criteria for  
20 evaluation of a proposal and its relative weight, and procedures for making  
21 awards;

22 (e) The proposed terms and conditions for the construction management services  
23 contract, including a description of the scope of services to be provided;

24 (3) Notice of any request for proposals shall be advertised in accordance with the

1 provisions of § 5-18-3;

2 (4) After obtaining and evaluating proposals, a public corporation may accept the  
3 proposal it considers the most advantageous to the public corporation. Acceptance  
4 of a proposal shall be by written notice to the construction manager submitting the  
5 accepted proposal, and by simultaneously notifying in writing the other construction  
6 managers that their proposals were not accepted; and

7 (5) The public corporation shall reserve the right to reject any or all proposals submitted.

8 Section 9. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 Each contract for a public improvement shall have a licensed design professional actively  
11 involved in the project from the start of design through final completion as required by chapter  
12 36-18A.



# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

725I0485

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1118** - 02/13/2003

Introduced by: Representatives Michels, Cradduck, Gillespie, Glenski, Konold, McCoy, Peterson (Bill), Sebert, Smidt, Thompson, Van Gerpen, and Wick and Senators Diedrich (Larry), Ham, Jaspers, Kleven, McCracken, Sutton (Dan), and Vitter

1 FOR AN ACT ENTITLED, An Act to revise certain design-build provisions.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 5-18-1 be amended by adding thereto a NEW SUBDIVISION to read as  
4 follows:

5 "Request for qualifications," the document or publication whereby a public corporation  
6 solicits interested design-builders to prequalify for a design-build contract.

7 Section 2. That § 5-18-31 be amended to read as follows:

8 5-18-31. Any request for proposals shall contain performance criteria developed by a  
9 performance criteria developer and approved by the public corporation. For projects not  
10 exempted under chapter ~~36-18~~ 36-18A from using a registered design professional, the  
11 performance criteria developer shall be a design professional registered under chapter 36-18A.  
12 For projects not exempt under chapter 36-18A from using a registered design professional, the  
13 performance criteria developer shall be hired on the basis of qualifications related to projects of  
14 similar scope.



Section 3. That § 5-18-35 be amended to read as follows:

5-18-35. ~~A~~ After a minimum of three design-builders have been prequalified in accordance with § 5-18-37, a request for proposals shall be mailed to each prequalified design-builder. The minimum number of prequalified design-builders is not required for any improvement project that is complex in nature, requires close coordination of design and construction expertise, and does not require significant structural changes, additions, reconstruction, or new construction. The request for proposals shall be prepared for each design-build contract containing, at a minimum, the following elements:

- (1) The identity of the public corporation which will award the design-build contract and the identity of the performance criteria developer;
- (2) The procedures to be followed for submitting proposals, the criteria for evaluation of a proposal and its relative weight, and the procedures for making awards;
- (3) The proposed terms and conditions for the design-build contract;
- (4) The performance criteria, which shall include the following:
  - (a) The owners preliminary program of space needs and special requirements;
  - (b) Performance standards for materials and equipment; and
  - (c) Minimum system requirements and efficiencies;
- (5) A description of the drawings, specifications, or other submittals to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications, or submittals that is acceptable;
- (6) A schedule for planned commencement and completion of the design-build contract;
- (7) Budget limits for the design-build contract, ~~if any~~;
- (8) Affirmative action, disadvantaged business, or set-aside goals or requirements for the design-build contract, if any;

(9) ~~The qualifications the design-builder is required to have;~~

~~—(10)—Requirements for performance and payment bonds, and insurance. At a minimum,~~

~~these~~ These requirements shall meet the requirements of § 5-21-1; and

~~(11)~~(10) The compensation, if any, to be given to design-builders submitting proposals

who are not awarded the project;

(11) Whether project financing is in place;

(12) A schedule for payments to the design-builder;

(13) Site identification and geotechnical information if the site is owner-provided;

(14) Location of existing utilities and their capacity if the site is owner-provided; and

(15) Warranty and guarantee requirements.

Section 4. That § 5-18-36 be amended to read as follows:

~~5-18-36. Notice of any request for proposals shall be advertised in accordance with the provisions of § 5-18-3 unless design-builders have been prequalified in accordance with the provisions of § 5-18-37. No request for proposals may include detailed designs or detailed drawings prepared by the criteria developer. The request may, however, include drawings of existing conditions and any preliminary conceptual sketches necessary to illustrate the information required by subdivision 5-18-35(4). Each conceptual drawing shall contain the minimum information necessary to convey the requirements. No request for proposals may include detailed construction specifications. Any design and construction standards in the request for proposals shall be performance standards only.~~

Section 5. That § 5-18-37 be amended to read as follows:

~~5-18-37. A public corporation may shall prequalify design-builders for design-build contracts by advertising requests for letters of interest its request for qualifications in accordance with § 5-18-3. Requests for letters of interest A request for qualifications shall contain, at a minimum,~~

1 the following elements:

- 2 (1) The identity of the public corporation;
- 3 (2) A description of the proposed public improvement;
- 4 (3) Budget limits for the proposed public improvement;
- 5 (4) The requirements the design-builder will be required to have; and
- 6 (5) The criteria and their relative weight for prequalification.

7 Section 6. That § 5-18-42 be amended to read as follows:

8 5-18-42. After obtaining and evaluating proposals according to the criteria and procedures  
9 set forth in the request for proposals, a public corporation may accept the proposal it considers  
10 most advantageous to the public corporation. Acceptance of a proposal shall be by written notice  
11 to the design-builder which submitted the accepted proposal. At the same time notice of  
12 acceptance is delivered, the public corporation shall also inform, in writing, the other  
13 design-builders that their proposals were not accepted. Unless all proposals are rejected, a  
14 detailed breakdown of the evaluation criteria scores for each proposal received shall be made  
15 available to the public after signature execution of the design-build contract. The contract for  
16 development of performance criteria shall terminate when a contract is awarded to the design-  
17 builder.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

841I0630

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1141** - 02/19/2003

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representative Michels

1 FOR AN ACT ENTITLED, An Act to require computer voice stress analyzer examiners to be  
2 licensed.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act and § 23-3-35 mean:

5 (1) "Computer voice stress analyzer" or "CVSA," an instrument that detects, measures,  
6 and displays changes in voice frequency, which can be recorded permanently and  
7 simultaneously;

8 (2) "CVSA examiner," a person who uses a computer voice stress analyzer to question  
9 individuals for the purpose of detecting deception.

10 Section 2. No person may question any individual using a computer voice stress analyzer for  
11 the purpose of detecting deception unless the person is a licensed CVSA examiner. A violation  
12 of this section is a Class 2 misdemeanor.

13 Section 3. A person may receive a license as a CVSA examiner if the person:

14 (1) Establishes that he or she is a person of good moral character;

15 (2) Has satisfactorily completed a sixty-hour course of study in the use of a computer



1 voice stress analyzer in the detection of deception; and

2 (3) Submits an application to the Office of the Attorney General along with a  
3 nonrefundable twenty-five dollar license fee.

4 Section 4. That § 23-3-35 be amended to read as follows:

5 23-3-35. In addition to powers conferred upon the law enforcement officers standards  
6 commission elsewhere in this chapter, the commission may:

7 (1) Promulgate rules and regulations for the administration of §§ 23-3-26 to 23-3-47,  
8 inclusive, including the authority to require the submission of reports and information  
9 by law enforcement agencies within this state;

10 (2) Establish minimum educational and training standards for admission to employment  
11 as a law enforcement officer:

12 (a) In permanent positions; and

13 (b) In temporary or probationary status;

14 (3) Certify persons as being qualified under the provisions of §§ 23-3-26 to 23-3-47,  
15 inclusive, to be law enforcement officers, and by rule to establish criteria and  
16 procedure for the revocation or suspension of the certification of officers who have  
17 been convicted of a felony or misdemeanor involving moral turpitude, have  
18 intentionally falsified any application or document to achieve certification, or have  
19 been discharged from employment for cause, or have engaged in conduct unbecoming  
20 of a law enforcement officer;

21 (4) Establish minimum curriculum requirements for preparatory, in-service, and advanced  
22 courses and programs for schools operated by or for the state or any political  
23 subdivisions of the state for the specific purpose of training recruits or other law  
24 enforcement officers;

- 1       (5)   Consult and cooperate with counties, municipalities, agencies of this state, other  
2           governmental agencies, and with universities, colleges, junior colleges, and other  
3           institutions concerning the development of law enforcement training schools and  
4           programs or courses of instruction;
- 5       (6)   Approve institutions and facilities for school operation by or for the state or any  
6           political subdivision of the state for the specific purpose of training law enforcement  
7           officers and recruits;
- 8       (7)   Make or encourage studies of any aspect of police administration;
- 9       (8)   Conduct and stimulate research by public and private agencies which is designed to  
10          improve police administration and law enforcement;
- 11      (9)   Make recommendations concerning any matter within its purview pursuant to  
12          §§ 23-3-26 to 23-3-47, inclusive;
- 13      (10)  Make such evaluations as may be necessary to determine if governmental units are  
14          complying with the provisions of §§ 23-3-26 to 23-3-47, inclusive;
- 15      (11)  Adopt and amend bylaws, consistent with law, for its internal management and  
16          control;
- 17      (12)  Enter into contracts or do such things as may be necessary and incidental to the  
18          administration of its authority pursuant to §§ 23-3-26 to 23-3-47, inclusive;
- 19      (13)  License and regulate the activities of private or law enforcement polygraph and  
20          computer voice stress analyzer examiners.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

248I0579

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1173** - 02/26/2003

Introduced by: Representatives Peterson (Bill) and Olson (Mel) and Senators Bogue and Moore

1 FOR AN ACT ENTITLED, An Act to create a constitutional revision commission to make a  
2 comprehensive study of Article III of the Constitution of this state and to consider and  
3 recommend legislation for the improvement of Article III of the Constitution.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. A commission is hereby created to provide for and enter into a comprehensive  
6 study of Article III of the South Dakota Constitution to determine ways and means to improve  
7 and simplify Article III of the Constitution.

8 Section 2. The commission shall consist of thirteen members to be appointed as follows:

9 (1) Three by the president pro tempore of the South Dakota Senate, from former  
10 members thereof, no more than two may be from one political party;

11 (2) Three by the speaker of the South Dakota House of Representatives, from former  
12 members thereof, no more than two may be from one political party;

13 (3) Three by the Governor of South Dakota, each of whom shall be residents of the state  
14 and no more than two may be from one political party;

15 (4) Three by the Governor of South Dakota, each of whom shall have a current or former





1 executive branch employment experience and no more than two may be from one  
2 political party;

3 (5) Three by the Chief Justice of the Supreme Court of South Dakota from the members  
4 in good standing of the State Bar of South Dakota, one of whom may be a judge of  
5 a court of record in this state and no more than two may be from one political party;  
6 and

7 (6) Two by the Governor, each of whom shall be a faculty member of a university or  
8 college political science department located in the state.

9 Section 3. The commission shall meet during the 2003 legislative interim. The commission  
10 may hold meetings and hearings at times and places as it may designate. It shall elect a chair,  
11 vice-chair, and such other officers from its membership as it deems necessary.

12 Section 4. The Legislative Research Council shall serve as the secretariat of the commission.  
13 The Legislative Research Council shall assist in the conduct of such studies as may be directed  
14 by the commission, utilizing the aid of consultants, private organizations, and institutions.

15 Section 5. The members of the commission shall be compensated in the same manner as  
16 members of an interim legislative committee.

17 Section 6. The commission shall report its findings and recommendations in the form of  
18 proposed amendments to the Constitution to the Legislature at its regular session in 2004.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

385I0595

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1190** - 02/26/2003

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Pederson (Gordon), Adelstein, Haverly, Hennies, Kraus, McCoy, McLaughlin, and Van Etten and Senators Vitter, Ham, and Napoli

1 FOR AN ACT ENTITLED, An Act to limit the ability of certain municipalities to annex territory  
2 in the vicinity of certain airports.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 9-4 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 No other municipality may annex any territory within one and one-quarter miles of any parcel  
7 of land operated as a municipal airport by an airport board organized pursuant to chapter 50-6.  
8 However, if the governing body of the airport-operating municipality consents, by resolution,  
9 to such a proposed annexation by another municipality, the provisions of this section do not  
10 apply to the extent of the waiver provided in the consent resolution of the airport-operating  
11 municipality.

12 Section 2. That chapter 9-4 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 If any municipality other than a municipality that operates a municipal airport by an airport



1 board organized pursuant to chapter 50-6 has annexed between March 15, 2003, and July 1,  
2 2003, any territory within one and one-quarter miles of any exterior boundary of such a  
3 municipal airport, the governing body of the airport-operating municipality may, by resolution,  
4 within sixty days of the date of such annexation, void all or any portion of such annexation within  
5 one and one-quarter miles of the exterior boundary of such municipal airport.

6 Section 3. That chapter 11-6 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 If a municipality operates an airport outside the corporate limits of the municipality, the  
9 municipality may exercise extraterritorial jurisdiction pursuant to §§ 11-6-11 and 11-6-26, but  
10 only within the boundaries of the municipally operated airport property and also within one and  
11 one-quarter miles of the exterior boundaries of the municipally operated airport property to the  
12 extent that such property is outside of the corporate limits of any other municipality. Such one  
13 and one-quarter miles extraterritorial jurisdiction supercedes the three-mile extraterritorial  
14 jurisdiction of any other municipality and also supercedes the jurisdiction of any other  
15 governmental entity, except as provided in Title 50.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

195I0403

SENATE TAXATION COMMITTEE ENGROSSED NO.

**HB 1192** - 02/26/2003

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Lintz, Begalka, Hargens, Klaudt, Lange, Pederson (Gordon),  
and Van Gerpen and Senators Duenwald, Dennert, Duxbury, Kleven, Symens,  
and Vitter

1 FOR AN ACT ENTITLED, An Act to revise the procedure for assessing certain agricultural  
2 property.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Notwithstanding the provisions of chapter 10-6, agricultural land may be assessed based on  
7 its agricultural income value if there are less than fifteen arms-length transactions of agricultural  
8 land during the three preceding assessment years. The agricultural income value of agricultural  
9 land shall be determined on the basis of the capitalized annual cash rent of the agricultural land.  
10 The capitalized annual cash rent shall be based on data collected and analyzed pursuant to section  
11 2 of this Act. For the purposes of this section, arms-length transactions do not include any  
12 agricultural land sales subject to the provisions of § 10-6-33.14, 10-6-33.20, or 10-6-74.

13 Section 2. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as  
14 follows:



1 For the purposes of section 1 of this Act, the agricultural income value shall be determined  
2 using capitalized annual cash rent. The annual cash rent is the annual cash rent, excluding the per  
3 acre tax on agricultural land, determined through an analysis of arms-length rental agreements  
4 collected within the county in the year prior to the year for which the income value is being  
5 determined. The annual cash rent shall be capitalized at seven and three-fourths percent.

6 The secretary of revenue may enter into a contract for the collection of cash rent information  
7 by county. Cash rent information shall be adjusted by soil survey statistics if available.

8 Section 3. That § 10-13-37.1 be amended to read as follows:

9 10-13-37.1. For purposes of section 1 of this Act and §§ 10-3-41, 10-12-31.1, and 10-13-37,  
10 the secretary of revenue shall calculate a factor for each county for the agricultural and  
11 nonagricultural valuations. The factor shall be calculated by using the sales of arms-length  
12 transactions and the assessments from the preceding assessment year. The secretary shall take  
13 into consideration any reappraisals completed by the director of equalization. If there are less  
14 than fifteen sales of either class, the secretary shall use the preceding year's sales of that class  
15 with current assessments. In the case of agricultural land, sales may also be bridged in from  
16 adjoining counties if there are less than fifteen sales.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

391I0364

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1211 - 02/26/2003**

Introduced by: Representatives Bradford, Adelstein, Bartling, Elliott, Engels, Gillespie, Glenski, Hanson, Hennies, Hundstad, Hunhoff, Kroger, Lange, Miles, Nesselhuf, Olson (Mel), Peterson (Jim), Sigdestad, Valandra, and Van Norman and Senators Moore, Abdallah, and Kloucek

1 FOR AN ACT ENTITLED, An Act to allow the housing of prisoners from other jurisdictions  
2 on Indian reservations under certain circumstances.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 24-11-3 be amended to read as follows:

5 24-11-3. If there is no jail or juvenile detention facility in the county, or if the jail or juvenile  
6 detention facility in the county is crowded, unsafe, or otherwise insufficient to conform to the  
7 requirements of this chapter, every judicial or executive officer of the county who has the power  
8 to order, sentence, or deliver any person to the county jail or juvenile detention facility may  
9 order, sentence, or deliver such person to the jail or juvenile detention facility of any near or  
10 adjoining state, Indian reservation, county, organized township, or municipality, pursuant to a  
11 written agreement to house such prisoner. The written agreement shall contain provisions  
12 addressing liability issues and facility standards and shall also contain appropriate provisions  
13 assuring that the agency housing the prisoner shall release the prisoner to the county from which  
14 the prisoner was committed within two days of receiving a request from the committing county.



1   The county from which the prisoner was committed shall pay to the agency housing the prisoner  
2   all expenses of keeping and maintaining the prisoner in the jail or juvenile detention facility,  
3   including the cost of building depreciation, administration, and a reasonable charge for  
4   obsolescence of the facility and all other tangible and intangible costs.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

814I0734

HOUSE HEALTH AND HUMAN SERVICES  
COMMITTEE ENGROSSED NO. **HB 1236** -  
02/21/2003

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representative Williamson and Senator Dempster

1 FOR AN ACT ENTITLED, An Act to allow for the exclusion of certain health insurance  
2 coverages as a condition of procuring individual health insurance.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-17-14 be amended to read as follows:

5 58-17-14. There shall be a provision as follows: "Entire contract; changes: This policy,  
6 including the endorsements and the attached papers, if any, constitutes the entire contract of  
7 insurance. No change in this policy is valid until approved by an executive officer of the  
8 insurance company and unless such approval is endorsed or attached to this policy. No insurance  
9 producer has authority to change this policy or to waive any of its provisions." Any rider,  
10 endorsement, or application added to a policy after the date of issue or at reinstatement or  
11 renewal which reduces or eliminates benefits or coverage in the policy requires signed acceptance  
12 by the policyholder. After the date of policy issue, any rider or endorsement which increases  
13 benefits or coverage with an accompanying increase in premium during the policy term must be  
14 agreed to in writing signed by the insured, unless the increased benefits or coverage is required





1 by law. Coverage as required by § 58-17-98 may be reduced or eliminated by a rider to, or an  
2 endorsement on, a new policy if the insurer would reject the application for the policy without  
3 the rider or endorsement based upon the applicant's preexisting condition of the type covered by  
4 § 58-17-98.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

292I0733

SENATE HEALTH AND HUMAN SERVICES  
COMMITTEE ENGROSSED NO. **HB 1277** -  
02/26/2003

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Van Etten, Christensen, Cradduck, Hunhoff, Kraus, McCoy, Miles, and Rave and Senators Brown and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to create a pharmaceutical prior authorization program for  
2 eligible individuals receiving medicaid.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Legislature recognizes that outpatient prescription drugs are an essential  
5 component of patient care and, as a health benefits payer under the state's medical assistance  
6 program pursuant to chapter 28-6, the Legislature directs the Department of Social Services to  
7 establish a prior authorization program to ensure that beneficiaries have access to medically  
8 necessary medicines in a clinically appropriate and cost-effective manner.

9 Section 2. A Medicaid Pharmaceutical and Therapeutics Committee is established within the  
10 Department of Social Services for the purpose of developing a pharmaceutical prior  
11 authorization program. The Medicaid Pharmaceutical and Therapeutics Committee shall consist  
12 of ten members appointed by the Governor. Five members shall be physicians licensed under  
13 chapter 36-4, one of whom is a psychiatrist, and five members shall be pharmacists licensed  
14 under chapter 36-11. The members shall be appointed to serve for terms of three years. Members



1 may be appointed to more than one term. The department shall serve as staff for the committee.  
2 The Governor shall ensure that at least some of the members of the Medicaid Pharmaceutical and  
3 Therapeutics Committee represent medicaid participating physicians and pharmacies serving all  
4 segments of the medicaid population, and have experience in either developing or practicing  
5 under a preferred drug formulary. Committee members shall select a chair and a vice chair each  
6 year from the committee membership.

7 Section 3. The Medicaid Pharmaceutical and Therapeutics Committee shall meet at least  
8 three times each year in person and, in addition, the committee may meet as needed via  
9 teleconference or electronically. The chair shall arrange for meetings and the Department of  
10 Social Services shall mail out agendas and record committee minutes. Any decision of the  
11 committee requires an affirmative majority vote of the committee members. Any agenda item  
12 shall be requested thirty days prior to the scheduled committee meeting at which it will be heard.  
13 Any person not a member of the committee may attend a committee meeting at the discretion  
14 of the chair. Each member of the committee may receive per diem compensation and allowable  
15 expense reimbursement pursuant to § 4-7-10.4.

16 Section 4. The Department of Social Services shall give notice of its intent to propose prior  
17 authorization requirements for prescription drugs and hold a public meeting regarding whether  
18 a certain drug or class of drugs shall require prior authorization. The department shall provide  
19 notice of the meeting at least thirty days prior to the meeting. Any interested party may provide  
20 information or recommendations, or both, related to the prior authorization of a drug.

21 Section 5. The Medicaid Pharmaceutical and Therapeutics Committee shall develop its  
22 recommendations for the prior authorization program by considering the clinical efficacy, safety,  
23 and cost-effectiveness of a product.

24 Section 6. The Medicaid Pharmaceutical and Therapeutics Committee shall:

- 1       (1)   Analyze and consider the recommendations of the interested parties and the potential  
2            impact of a decision to require prior authorization of a drug on the clinical care likely  
3            to be received by individuals covered under chapter 28-6;
- 4       (2)   Make recommendations to the Department of Social Services for the establishment  
5            and maintenance of an outpatient prescription drug prior authorization program; and
- 6       (3)   Review on at least an annual basis whether drugs placed on prior authorization are to  
7            remain on prior authorization.

8       The department may accept or reject the recommendations provided by the committee and  
9       retains the authority to require prior authorization. The department shall post the list of drugs  
10      requiring prior authorization, together with any limits on coverage, on the department's website.

11      Section 7. The prior authorization program shall meet the following conditions:

- 12      (1)   The program shall provide telephone, facsimile, or other electronically transmitted  
13            approval or denial within twenty-four hours after receipt of the prior authorization  
14            request;
- 15      (2)   In an emergency situation, including a situation in which a response to a prior  
16            authorization request is unavailable, a seventy-two hour supply of the prescribed drug  
17            shall be dispensed and paid for by the medical assistance program or, at the discretion  
18            of the department, a supply greater than seventy-two hours that will assure a  
19            minimum effective duration of therapy for an acute intervention;
- 20      (3)   Authorization shall be granted if the drug is prescribed for a medically accepted use  
21            supported by either the compendia, approved product labeling, or peer-reviewed  
22            literature unless there is a therapeutically equivalent drug that is available without  
23            prior authorization; and
- 24      (4)   The department shall consult with prescribers to develop a streamlined process for the

1           prescriber to furnish any documentation required to support a prior authorization  
2           request, including the name, title, address, and telephone number of the prescriber  
3           making the request, date of the request, the product name of the requested drug, a  
4           description of the circumstances and basis for the request, and whether the request is  
5           an emergency.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

372I0528

HOUSE TAXATION COMMITTEE ENGROSSED NO.

**HB 1279** - 02/21/2003

**This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Peterson (Jim), Begalka, Burg, Elliott, Hargens, and Sigdestad and Senators Symens, Dennert, Diedrich (Larry), and Duxbury

1 FOR AN ACT ENTITLED, An Act to define biodiesel blend fuels.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 10-47B-3 be amended by adding thereto a NEW SUBDIVISION to read  
4 as follows:

5 "Biodiesel blend," a blended special fuel containing a minimum of two percent by volume of  
6 biodiesel. Biodiesel means a renewable, biodegradable, mono alkyl ester combustible liquid fuel  
7 that is derived from agricultural plant oils or animal fats and that meets American Society For  
8 Testing and Materials Specification D 6751-02 for Biodiesel Fuel (B100) Blend Stock for  
9 Distillate Fuels.



# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

446I0572

HOUSE HEALTH AND HUMAN SERVICES  
COMMITTEE ENGROSSED NO. **HCR 1013 -**  
**02/24/2003**

Introduced by: Representatives Nesselhuf, Begalka, Cradduck, Cutler, Engels, Garnos, Gillespie, Hunhoff, LaRue, Madsen, McCoy, and Van Etten and Senators Kooistra, Brown, Ham, Kelly, and Olson (Ed)

1 A CONCURRENT RESOLUTION, Supporting affordable health care including prescription  
2 drugs, a safe and secure retirement, and quality long-term care that is accessible and  
3 affordable for older South Dakotans.

4 WHEREAS, there are approximately one hundred twenty-five thousand Medicare  
5 beneficiaries in South Dakota; and

6 WHEREAS, over seventy-five thousand South Dakotans have no health insurance at all and  
7 over a third of them fall between the ages of forty-five to sixty-five; and

8 WHEREAS, health care costs, including prescription drugs and health insurance, are the  
9 fastest rising expenditures our state's older adults face in their retirement years; and

10 WHEREAS, American Association of Retired Persons' data in South Dakota shows that  
11 sixty percent of those surveyed indicated that paying for prescription drugs was a problem over  
12 the last year, forty percent of respondents paid one thousand two hundred dollars or more in the  
13 last year, and seventy-five percent indicated that they are concerned about meeting their  
14 prescription drug needs over the next two years; and



1 WHEREAS, Kaiser Family Foundation data shows that the lack of drug coverage  
2 disproportionately affects beneficiaries living in rural area as fifty percent lack any coverage  
3 versus thirty-four percent in urban areas; and

4 WHEREAS, current Social Security programs offer a defined, inflation-protected benefit and  
5 continue to be the single most stable and secure source of retirement income for over one  
6 hundred fifty thousand South Dakotans; and

7 WHEREAS, the long-term solvency of the Social Security program is crucial to current and  
8 future generations of South Dakotans; and

9 WHEREAS, the accessibility, quality, and affordability of long-term care services, such as  
10 home and community based services, assisted living centers, nursing homes, and others, are  
11 critical to preserving an expected quality of life for all older South Dakotans:

12 NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Seventy-  
13 eighth Legislature of the State of South Dakota, the Senate concurring therein, that the  
14 Legislature of the State of South Dakota supports, recognizes, and understands these important  
15 issues that affect our state's older population and will work with our state's delegation in the  
16 United States Congress to ensure that affordable health care, a secure retirement, and affordable  
17 long-term care are protected and preserved for current and future generations of South  
18 Dakotans; and

19 BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to Senator Tom  
20 Daschle, Senator Tim Johnson, and Representative Bill Janklow.